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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

In the matter of:)	
)	
BIRCH CIRCLE FARMS, INC. and)	DOCKET NO. CWA-10-99-0144
GEORGE WARMINGTON,)	REQUEST FOR INFORMATION
McMinnville, Oregon,)	AND COMPLIANCE ORDER
Respondents.)	
_____)	

The following FINDINGS AND CONCLUSIONS are made and ORDER issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Sections 308 and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318 and 1319(a). This authority has been delegated to the Regional Administrator, Region 10, and has been duly redelegated to the undersigned Director, Office of Water, Region 10.

I. STATUTORY AUTHORITY AND FACTUAL BACKGROUND

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person, except, *inter alia*, as authorized by a National Pollutant

1 Discharge Elimination System ("NPDES") permit issued pursuant to
2 Section 402 of the CWA, 33 U.S.C. § 1342.

3 2. Section 402 of the CWA, 33 U.S.C. § 1342, provides that a
4 state with an approved NPDES program may issue permits for the
5 discharge of any pollutant into waters of the United States upon
6 such specific terms and conditions as the state may prescribe.

7 3. Respondent Birch Circle Farms, Inc. is a corporation duly
8 organized under the laws of the State of Oregon. Respondent George
9 Warmington is the corporation's President and personally
10 participates in and directs its operations. Birch Circle Farms,
11 Inc. and George Warmington are hereinafter collectively referred to
12 as "Respondents."

13 4. Each of the Respondents is a "person" within the meaning
14 of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and Section
15 1401(12) of the SDWA, 42 U.S.C. § 300f(12).

16 5. Respondents own and operate a dairy farm located at 10475
17 NE Warmington Road, McMinnville, Oregon ("Farm") which contains a
18 concrete-surfaced animal confinement lot ("Facility").

19 6. The Oregon Department of Environmental Quality ("ODEQ")
20 issues NPDES permits pursuant to an NPDES program approved by EPA.

21 7. On October 8, 1990, ODEQ issued General Permit Number
22 0800 ("Permit"). In relevant part, the Permit prohibits any
23 "discharge or potentially harmful indirect discharge to state
24 waters" from any "confined animal feeding operation" with coverage
25 under the Permit.

26 8. At all times relevant to this ORDER, Respondents had
27 coverage under the Permit for the Facility.
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1 9. On December 10, 1998 and February 10, 1999, EPA conducted
2 NPDES inspections of Respondents' Farm.

3 10. At the time of the December 10, 1998 and February 10,
4 1999 NPDES inspections, the Facility confined approximately 500
5 mature dairy cattle and 300 heifers. The number of cattle confined
6 at the Facility exceeds 300 "animal units" as that term is defined
7 in 40 C.F.R. Part 122, Appendix B.

8 11. The Facility stables or confines and feeds or maintains
9 dairy cattle for a total of 45 days or more in any 12-month period.

10 12. Neither crops, vegetation, forage growth, nor post-
11 harvest residues are sustained during the normal growing season
12 over any portion of the Facility.

13 13. The Facility discharges pollutants into navigable waters
14 through a man-made ditch, flushing system, or similar man-made
15 device.

16 14. The Facility is a "concentrated animal feeding operation"
17 as that term is defined in 40 C.F.R. Part 122, Appendix B and used
18 in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

19 15. The Facility is a "confined animal feeding operation" as
20 that term is defined in O.R.S. § 468B.205.

21 16. At the time of the December 10, 1998 NPDES inspection,
22 EPA observed a discharge of manure-laden wastewater which
23 originated from the Facility enter Hawn Creek. This wastewater
24 contained "pollutants" within the meaning of Section 502(6) of the
25 CWA, 33 U.S.C. § 1362(6).

26 17. Water in Hawn Creek flows to the Yamhill River which is a
27 tributary of the Willamette River. The Willamette River is a
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1 tributary of the Columbia River which is subject to the ebb and
2 flow of the tide.

3 18. At the time of the February 10, 1999 NPDES inspection,
4 EPA observed a discharge of manure-laden wastewater which
5 originated from the Facility enter the Yamhill River. This
6 wastewater contained "pollutants" within the meaning of Section
7 502(6) of the CWA, 33 U.S.C. § 1362(6).

8 19. The Yamhill River is a tributary of the Willamette River.
9 The Willamette River is a tributary of the Columbia River which is
10 subject to the ebb and flow of the tide.

11 20. The discharges of wastewater described in Paragraphs 16
12 and 18 were to "navigable waters" within the meaning of Section
13 502(7) of the CWA, 33 U.S.C. § 1362(7), and to "waters of the
14 state" or "state waters" within the meaning of O.R.S.
15 § 468B.005(8).

16 21. The discharges of wastewater described in Paragraphs 16
17 and 18 each constituted a "discharge of pollutants" within the
18 meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12), from a
19 "point source" within the meaning of Section 502(14) of the CWA, 33
20 U.S.C. § 1362(14).

21 22. The discharges of wastewater described in Paragraphs 16
22 and 18 did not result from a 25-year, 24-hour storm event.

23 23. The discharges of wastewater described in Paragraphs 16
24 and 18 each constituted a direct discharge or potentially harmful
25 indirect discharge to state waters and therefore violated Special
26 Condition 1 of the Permit.

24. EPA therefore finds that Respondents are in violation of a condition in a permit issued by the State of Oregon under Section 402 of the Act.

II. ORDER

Based upon the foregoing FINDINGS, and pursuant to Sections 308 and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319(a), it is hereby ORDERED as follows:

25. Immediately upon receipt of this ORDER, Respondents shall cease all discharges of pollutants to navigable waters or state waters which originate from the Facility including, but not limited to, discharges related to land application, confinement areas, silage piles, or waste storage ponds.

26. Immediately upon receipt of this ORDER and continuing for a period of one year from the date of this ORDER, Respondents shall conduct daily visual monitoring of all potential sources of pollutant discharges to navigable waters or state waters which originate from the Facility. Monitoring locations shall include, but are not limited to, areas of potential or actual discharges from fields subject to land application of wastes, confinement areas, silage piles, and waste storage ponds. Respondents shall develop a monitoring log containing the following information for each area monitored: the date and time of the visual observation, an indication of whether or not a discharge was observed, and the initials of the person making the observation. Respondents shall maintain the monitoring records at the Farm for at least three years after the date of this ORDER and shall immediately make them available for inspection or copying upon request by an authorized

1 representative of EPA or the State. The operator of the Facility
2 subject to this ORDER shall know the location of the records.

3 27. For each discharge from the Facility which enters
4 navigable waters or state waters, Respondents shall:

- 5 a. Sample the discharge within two (2) hours of
6 observing the discharge and submit the sample to a
7 state-certified laboratory to be analyzed for fecal
8 coliform;
- 9 b. Prepare and submit to EPA a written Report of
10 Discharge containing the following information: (1)
11 date and time of the discharge; (2) location of the
12 discharge; (3) origin of the discharge; (4) sample
13 analysis results; and (5) steps taken to prevent
14 reoccurrence of the discharge; and
- 15 c. Provide the Report of Discharge to EPA within ten
16 (10) days of the discharge.

17 28. In the event that Respondents are unable to comply with
18 any requirement of this ORDER, Respondents shall, within ten (10)
19 days of becoming aware of such inability, provide the following:

- 20 a. A summary of the specific reasons why Respondents
21 are unable to comply with the requirement;
- 22 b. A summary of all actions taken by Respondents or
23 others that Respondents allege demonstrate "good
24 faith efforts" to comply with the requirement; and
- 25 c. The date by which Respondents expect to comply with
26 the requirement.

1 29. Submittals required by this Request for Information and
2 Compliance Order shall be submitted to:

3 U.S. Environmental Protection Agency
4 Region 10
5 1200 Sixth Avenue, OW-133
6 Seattle, Washington 98101
7 Attn: Chae Park

8 30. Pursuant to 40 C.F.R. §§ 2.201 - 2.311, Respondents may
9 assert a business confidentiality claim covering any portion of the
10 submitted information which is entitled to confidential treatment
11 and which is not effluent data. For any such claim, describe the
12 basis for the claim under the applicable regulation. Any material
13 for which business confidentiality is claimed should be placed in a
14 separate envelope labeled, "Confidential Business Information."
15 Failure to assert a claim in the manner described in 40 C.F.R. §
16 2.203(b) allows EPA to release the submitted information to the
17 public without further notice. EPA may disclose information
18 subject to the business confidentiality claim only to the extent
19 set forth in the above-cited regulations. Special rules governing
20 information obtained under the Clean Water Act appear in 40 C.F.R.
21 § 2.302.

22 31. Nothing in this ORDER shall be construed to relieve
23 Respondents of the requirement to obtain and comply with any NPDES
24 permit or other applicable requirements of other federal, state, or
25 local law. EPA reserves the right to take enforcement action as
26 authorized by law for any violation of this ORDER, and for any
27 future or past violation of any permit or other applicable legal
28 requirement.

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Dated this _____ day of _____, 1999

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